

TESTIMONY OF ROGER ST. PIERRE, VICE-CHAIRMAN OF THE CHIPPEWA  
CREE TRIBE OF THE ROCKY BOY'S RESERVATION AND CHAIRMAN OF THE  
CHIPPEWA CREE WATER RIGHTS NEGOTIATING TEAM  
REPRESENTING THE CHIPPEWA CREE TRIBE  
IN SUPPORT OF S. 1899  
- "THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION INDIAN  
RESERVED WATER RIGHTS SETTLEMENT ACT OF 1998" -  
BEFORE THE  
SENATE INDIAN AFFAIRS AND  
ENERGY AND NATURAL RESOURCES COMMITTEES

JUNE 24, 1998

Chairman Campbell, Chairman Murkowski, Chairman Kyl, and Honorable Members of the Indian Affairs and Energy and Natural Resources Committees:

My name is Roger St. Pierre. I am Vice-Chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation and Chairman of the Tribe's Water Rights Negotiating Team. I am here to testify on behalf of the Chippewa Cree Tribe in support of Senate Bill 1899 entitled "The Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1998". I appreciate the opportunity to appear before you today to urge your approval of this bill. We would also like to express the Tribe's appreciation to Senator Baucus and Senator Burns and their staffs for their help and support in moving this bill forward.

S. 1899 represents a milestone of momentous significance in the century-long struggle of the Chippewa Cree people to secure a viable self-sustaining tribal homeland, and in particular to secure rights to water for drinking and for agriculture. The bill and the Water Rights Settlement Compact, which the bill ratifies, reflect 16 years of technical and legal research, and negotiation, among the Tribe, the State of Montana, and the Administration. This bill and the Compact it ratifies represent a turning point in the Chippewa Cree Tribe's history for these documents set the foundation for the Tribe's future growth and the development of a self-sustaining tribal homeland. The Tribe has been working toward this end since well before 1916 when the United States set aside the Rocky Boy's Reservation for our People.

**I. HISTORY OF THE TRIBE'S EFFORTS TO SECURE A VIABLE HOMELAND**

**A. THE LONG ROAD TO ESTABLISHMENT OF A RESERVATION**

As early as 1893, our forefathers were petitioning the United States to set aside a reservation for the Chippewa Cree people in Montana who were attempting to live and work in northern Montana as their ancestors had for centuries before them. Being without a federally set aside land base, they became known as and referred to in Montana as the "landless" Indians. The Chippewa Chief Rocky Boy and the Cree Chief Little Bear led these early efforts of our people to secure a permanent tribal homeland in Montana. In 1902, a petition by the Chippewa Cree to President Theodore Roosevelt finally prompted federal efforts to establish a reservation in

Montana. Those efforts were ineffectual until federal land became available with the abandonment of the Fort Assinniboine military reserve in 1911. A Chippewa Cree Chief in a letter on June 14, 1915, pleaded with Congress to set aside for the Tribe the northern portion of the military reserve which had the better land and greatest volume of water.

I and my people are anxious to have a home; to settle down and become self-supporting. Other tribes have their own land and homes; we are homeless wanderers. We are anxious to learn to farm, and if given land that can be farmed and which will be our own, we will soon be self-supporting.

Regarding the pending legislation to divide up the military reserve land between the Tribe and the local non-Indian community, Superintendent, Jewell Martin, whose duties included the supervision of Rocky Boy's band, said predictably:

If they should pass the bill giving only the two south townships we will still have the Rocky Boy problem, as they will still have no home.

In 1916, Congress enacted a law setting aside the Rocky Boy's Reservation for the Chippewa Cree Indians on little more than two townships, about 55,000 acres, in the least productive southern portion of the abandoned military reserve. About 450 Chippewa Cree people settled on this Reservation. Consequently, the Reservation from the beginning did not contain adequate water or land to sustain the Tribe. The part of the military reserve that contained the best land and the most water was granted by Congress to the local non-Indian community for a recreational and sportsmen's park.

## **B. A WATER-SHORT RESERVATION**

From the very beginning, the United States recognized that the 1916 Reservation lacked sufficient land and water to make the Reservation a viable homeland for the Chippewa Cree Tribe. The Chippewa-Cree tried to farm their Reservation which was described in Federal Annual Reports as "rough, dry unsettled section of old military reserve" and "not suited to farming". These reports, from 1918 through the 1930's, were replete with statements that the Reservation was not suited to farming, and that irrigation was difficult or not possible and more water was needed. They said farming would not lead to self-sufficiency; stock raising was felt to be the only feasible activity, provided enough winter feed was available. These reports provide a litany of crop failures due to -drought, short season, lack of equipment and horses, and a picture of dogged perseverance against these formidable odds.

Irrigation was essential to stock-raising as well. The 1937 Federal Extension Report stated that, besides being the sixth consecutive year of near complete crop failure:

The cattle industry received a severe blow this year when no feed was produced to carry the stock through the winter. The breeding stock was culled very closely and approximately fifty percent of them were put on the market. Three hundred fifty-six selected cows and one hundred thirty-eight steer calves were shipped to Dixon, Montana, for winter feeding. Thirty bulls and

three milk cows are the only Indian cattle remaining on the reservation. The livestock men were very discouraged.

Commissioner Collier lamented that the Reservation was "entirely inadequate for the needs of the Indians for whose benefit it was set aside..... Due to the prevailing unfavorable crop and livestock conditions, and the lack of irrigable land and water, the Indians and the United States began to look for ways to enlarge the Reservation. During subsequent years, various Federal efforts to obtain additional land and water for the Tribe and to develop the Tribe's agricultural projects were undertaken. However, these efforts largely failed because of poor planning and implementation by the Federal Government, and because of the legal uncertainty over the nature and scope of the Tribe's water rights.

### **C.      INEFFECTUAL FEDERAL EFFORTS TO SECURE SUFFICIENT WATER FOR THE RESERVATION**

#### **1.      Poor Federal Land Purchase Decisions**

In the 1930's, and 1940's the United States purchased land for the Rocky Boy's Reservation, adding approximately forty-five thousand (45,000) acres to the Reservation. Unfortunately, the additional lands did little to alleviate the Reservation's problems. The lands acquired were scattered, of poor quality, and were without significant water resources. The Chippewa-Cree still could not raise enough crops or feed for stock to meaningfully improve reservation conditions. The United States recognized the Reservation was still wholly inadequate as a self-sustaining homeland. This is evidenced by the government's 1938 Land Acquisition Plan for the Rocky Boys Reservation which planned for a reservation of more than 800,000 acres with access to the Milk River Irrigation system - a plan which was never implemented.

In the 1930's, the United States took options for the Chippewa-Cree Indians on approximately 30,000 acres, under the submarginal land program. The intent of this program was to take submarginal land out of commercial farm production forever. The program was ill-suited to the Chippewa-Cree's needs; the government's ill-advised decision to utilize the program as a way to obtain more lands for Indians was made worse by the poor land selections made, when better lands were available. The government planned to carve up the submarginal lands into subsistence farms for the Indians. But without water or sufficient irrigable land, even subsistence farming could not succeed. Before the purchases could be completed, funding for the submarginal land program fell through and the options were transferred to the Indian Reorganization Act, which allowed for purchases of lands to be added to reservations.

The Indian Reorganization Act did not require the purchase of submarginal lands. Nevertheless, rather than identifying lands better suited to the Indian's needs, against the recommendations of the Reservation Superintendent, and over the objections of the Indians and government personnel, the Indian Office accepted wholesale the badly scattered options taken under the submarginal land program.

Subsequent purchases were an effort to consolidate the scattered purchases to simplify

fencing and alleviate jurisdictional problems. Even less attention was given to obtaining irrigable lands with water rights. In fact, good sources of water were sold or traded away in efforts to consolidate purchased land through land and lease exchanges.

## **2. Failure to Obtain and Develop Adequate Water and Land for the Tribe**

In 1937, the United States developed a greatly detailed land purchase plan, which was said to be the result of the collaboration of all units of the Indian Service, and endorsed by the Tribe. Even without consideration for a normal population increase, the plan called for the purchase of an additional 660,000 acres, including 16,000 acres of irrigated land, at a cost of \$5,040,000.00, to serve the then existing Reservation population of 150 families and 400 eligible homeless families. The purchase area took in part of, and was intended to benefit from, the Milk River Irrigation System. While never followed, this plan has apparently never been discarded.

From the beginning, the United States recognized that water for irrigation was needed, but did little to obtain it. The supervising engineer investigated Indian water rights and reported in 1926 that Indian rights were doubtful because of the late date of the Reservation, and that diversions by Indians from creeks should not be encouraged. The United States did not make a determination as to whether this was legally correct; instead the United States deferred continually to non-Indian interests. Thus, no irrigation project was ever built or utilized at the Rocky Boy's Reservation.

## **3. Failure to Provide the Tribe with a Self-Sustaining Tribal Homeland**

The United States' mismanagement of tribal resources on the Reservation was at great expense to the Tribe. Poor land purchase decisions provide the most egregious example. While more suitable lands were available, purchased lands either lacked usable water rights or lacked the quality to support irrigation development. Another example is Bonneau dam which could have been designed and constructed, easily and at minor additional cost, at a higher level to store sufficient water to adequately irrigate the Tribe's crop land. This would have greatly enhanced the Tribe's ability to be self-sufficient. Yet another example is the chronic past under-performance of the Tribe's agricultural lands due, among other things, to lack of training, equipment and water for irrigation. In addition, thousands of acres of purchased lands were never farmed. The Tribe has suffered and continues to suffer tremendously, financially and otherwise from the United States' historic mismanagement of its resources.

The Federal Government's efforts to secure land and water for the Tribe diminished over the years. However, the Tribe never ceased to press forward in its quest for a viable permanent - homeland -- a critical goal being to secure rights to sufficient water for its people and its economy.

## **II. THE CHIPPEWA CREE TRIBE'S NEED FOR WATER**

Presently, the Rocky Boy's Reservation occupies about 109,620 acres. (Please see attached map of the Reservation and its drainage.) The Reservation has never been allotted, and

all land is held in trust by the United States for the Chippewa Cree Tribe. The present population on the Rocky Boy's Reservation is about 3500. The population is expected to increase at an average annual growth rate of at least 3%. Unemployment on the Reservation is at least 70%. The annual per capita income of a tribal member on the Reservation is \$4,278 as compared to \$14,420 for the nation as a whole (based on 1989 dollars). The percentage of tribal members who live below the poverty level is about 48.9% as compared to 13.2% of the general population in the United States.

The current water supply systems on the Reservation were designed by the Indian Health Service (IHS) with an average daily rate of use of 60 gallons per capita per day (gpcpd), significantly below the Montana average domestic water use rate of 170 gpcpd. Many Chippewa Cree homes on the Reservation have wells which provide poor quality water in insufficient amounts. The IHS acknowledges the need for a better and more reliable municipal, rural, and industrial (MR&I) water supply on the Reservation. The primary sources of domestic water for the several small on-Reservation systems are wells. There is great difficulty in developing reliable sources of water from the groundwater aquifers. The quantity of water from the shallow aquifers on the Reservation is not sufficient for sustained domestic use. The quality of water from deeper aquifers is not suitable for domestic use, although such water may have some use in the future for certain industrial purposes. Wastewater treatment on the Reservation is provided by either individual septic systems or by community lagoon systems which are marginally effective under the current conditions. Because many of the tribal wells are located in close proximity to these wastewater systems and to stock grazing areas, there is a continuing threat to the water supply from bacterial and viral contamination. Before a chlorination unit was added to the current Rocky Boy Rural Water System in March, 1992, boil orders were occasionally imposed on water from the System due to contamination of one of the system wells. As the population continues to increase at a relatively rapid pace, improvements to the wastewater collection and treatment facilities will be needed to protect existing ground and surface water needs.

The total storage capacity of the existing on-reservation water system is 339,000 gallons. This water system is inadequate to meet the tribal drinking water needs of the current population of about 501,000 gpcpd (assuming an average per capita demand of 144 gpcpd). Certainly the existing system is far from adequate to meet the Tribe's future drinking water needs estimated to be about 1,216,000 gpcpd for a tribal population of about 8500 in 2025, and 2,195,000 gpcpd for a tribal population of about 16000 in 2045. In addition to the drinking water needs, the Tribe currently needs 569,000 gallons per day for commercial, industrial, stockwatering, and recreational needs. In 30 years, this need will increase to about 1,331,000 gpd, and in 50 years, to about 2,311,000 gpd. S. 1899 provides funds to enlarge Bonneau Reservoir as well as other reservoirs. The Tribe plans to use the water from the increased storage in Bonneau to increase agricultural development on the Reservation. However, even if Bonneau Reservoir were to be used to supply drinking water at the expense of the Tribe's agricultural economy, the water would be sufficient only until the year 2025.

Clearly, a dependable source of high quality water is needed to enable the Tribe to achieve an adequate standard of living and quality of life. An adequate supply of water is the cornerstone of economic development on the Reservation. Without an adequate supply of good

quality of water, the Tribe can never achieve its long-standing goal of economic self-sufficiency,

### **III. SETTLEMENT OF THE CHIPPEWA CREE WATER RIGHTS CLAIMS - THE COMPACT AND THE CONGRESSIONAL ACT.**

The Tribe's best opportunity to obtain an adequate water supply for its current and future needs began in 1982 when the United States filed water rights claims for the Tribe in Montana water court. Subsequently, the United States, the Tribe and the State of Montana entered into negotiations to settle the Tribe's water rights claims. The Tribe constructed a water rights settlement plan to further the ultimate goal of making the Rocky Boy's Reservation a self sustaining homeland. The settlement plan consists of four main elements: (1) quantification of on-Reservation water and establishment of an water administration program; (2) supplementation of the on-Reservation drinking water supply to meet future population needs; (3) construction of on-Reservation facilities to deliver drinking and irrigation water; and (4) compensation for federal failure to protect the Tribe's water rights followed by Tribal release of claims against the federal government for such breach of trust. The Tribe's settlement plan would require negotiation of a Compact with the State of Montana settling issues of quantification and administration of on - Reservation water supplies. And the plan would require enactment of the bill before you today to ratify the Compact, provide a source of water to supplement the short water supply on the Reservation, authorize the construction of an on-Reservation distribution and irrigation system, and provide an economic development fund.

#### **A. THE CHIPPEWA CREE - MONTANA COMPACT**

In 1982, pursuant to state law, the Federal Government filed water rights claims in Montana water court for the Chippewa Cree Tribe. The Tribe then notified the State of Montana that the Tribe wished to negotiate a settlement of its water rights claims. At that point, the State water court stayed proceedings on the Tribe's claims pending settlement negotiations involving the Tribe, the State and the United States. The Tribe then commenced the formidable task of negotiating a compact with the State of Montana and the United States which settles its water rights claims.

On April 14, 1997, after 10 years of extensive technical studies, and five years of intensive negotiations, the Chairman of the Chippewa-Cree Tribe and the Governor of Montana signed an historic water rights compact between the two governments. The Chippewa Cree - Montana - Compact accomplished the first element of the Tribe's settlement plan - it quantifies the Tribe's water rights and establishes a joint Tribe/State water administration system. The Compact was ratified by the Tribe on February 21, 1997 and was approved by the Montana Legislature on April 10, 1997. The Chippewa-Cree Tribe thus became the third tribe in Montana, after the Northern Cheyenne Tribe and the Assiniboine & Sioux Tribes of the Fort Peck Reservation, to agree to a water rights compact with the State. However, with few exceptions, all provisions of the Compact are subject to approval by the United States Congress.

The Compact establishes the Tribe's water rights to the Big Sandy, Box Elder, and Beaver

Creeks on the Reservation, and contemplates tribal rights to supplemental water for drinking. The Compact provides for 9260 acre-feet of water per year from the Big Sandy Creek and its tributaries, and 740 acre-feet per year from Beaver Creek. The Tribe reserves the right to divert from surface water flows for irrigation and other uses from the Lower Big Sandy Creek, Gravel Coulee, and from Box Elder Creek. On Beaver Creek, the Tribe reserves the right to divert from surface water flows for recreational uses, subject to a requirement that 280 acre-feet be returned to the stream.

The Compact also calls for Tribal administration of its water rights. The Compact specifies that any change in water use must be without adverse effect on other water users. To resolve disputes concerning water use between Tribal and non-tribal water users under the Compact, a pre-adjudication Tribal/State administrative process is established, and an adjudicatory process is established consisting of a Compact Board made up of three members: one Tribal, one local off-Reservation, and one chosen by the other two.

The Administration, while supportive of the quantification aspects of the Compact, declined to sign the Compact for the United States primarily because the issue of a supplemental water supply for the Tribe had not been resolved. With the signing of the Compact, Congressional legislation became the next step. This necessarily involved continuing negotiations with the Administration to obtain its support.

**B. CONGRESSIONAL ACTION IS NEEDED TO RATIFY THE COMPACT, PROVIDE ADDITIONAL SOURCES OF WATER FOR THE TRIBE, AND PROVIDE COMPENSATION FOR THE TRIBE'S RELEASE OF BREACH OF TRUST CLAIMS AGAINST THE UNITED STATES**

The Chippewa Cree - Montana Water Rights Compact, intended to permanently settle all existing water rights claims of the Chippewa Cree Tribe in the State of Montana, accomplishes one important element of the Tribe's settlement plan. The remaining three elements -- supplementation of the on-Reservation drinking water supply to meet future population needs; construction of on-Reservation facilities to deliver drinking and irrigation water-, and compensation for federal failure to protect the Tribe's water rights followed by Tribal release of claims against the United States -- must be obtained through Congressional action. In addition, congressional ratification of the Compact is needed to confirm the quantification of the Tribe's water rights under that agreement. Because of the permanence of the settlement once secured by congressional legislation, the Tribe seeks a settlement that provides not merely for its present water needs, but also for its future water needs.

Accordingly, each and every provision of S. 1899, entitled "The Chippewa Cree of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1998", was negotiated among the Tribe, the State and the Administration over the past year. Thus, S. 1899, as modified somewhat since its introduction on April 1, 1998, has the support of all three parties - the first water rights settlement to have such all encompassing support. The bill would accomplish the following:

1 . Ratify the Chippewa Cree - Montana Water Rights Settlement Compact providing 10,000 acre feet per year from surface and groundwater sources on the Reservation.

2. Authorize the appropriation of \$3,000,000 to the Tribe to perform its administration obligations under the Compact, such as the installation and maintenance of Compact-required water gages, and the staff costs associated with administration of the Tribe's Compact-related obligations. However, except for \$400,000 for capital expenditures, the Tribe may only expend the interest on this fund for Tribal Compact administration obligations.

3. Authorize the appropriation of \$25,000,000 to the Department of the Interior for the Bureau of Reclamation for the construction of certain on-Reservation water development projects, including the enlargement of Bonneau Dam, and other designated on-Reservation dams. The Tribe expects to assume responsibility for this work under its Self-Governance Compact. The Tribe and the Bureau of Reclamation have negotiated the terms of an agreement as to the Bureau's oversight role in this work.

4 Authorize the allocation of 10,000 acre feet per year from Lake Elwell located behind Tiber Dam, a Bureau of Reclamation project, approximately 50 miles from the Reservation on the Marias River to provide a source of future drinking water supplies for the Tribe. This authorization does not impose on the United States a present obligation to develop or to transport the allocated water to the Rocky Boy's Reservation. However, the bill authorizes other appropriations intended to pave the way for the future importation of water to the Reservation.

a. \$1,000,000 is authorized to be appropriated to the Secretary of the Interior, through the Bureau of Reclamation, to perform a municipal, rural, and industrial feasibility study of water and related resources in North Central Montana for the purpose of evaluating alternative means of transporting needed water to the Reservation. (\$3,000,000 is authorized to be appropriated to the Secretary of the Interior for a regional feasibility study of water and related resources in North Central Montana.)

b. \$15,000,000 is authorized to be appropriated to the Department of the Interior for the Tribe to be used as seed money for future water supply facilities needed to import drinking water to the Rocky Boy's Reservation consistent with the agreement of the Tribe, the State, and the United States that importation of water is necessary to meet the current and future drinking water needs of the Tribe. However, the Tribe expects that it will be required to return to

Congress in the future for additional moneys to fund the final design of a future water importation system.

4. Authorize the appropriation of \$3,000,000 for a Tribal economic development fund.

The Tribe may expend the funds appropriated for the Rocky Boy's Reservation feasibility study and for Tribal Compact administration obligations immediately upon appropriation. However, all other funds may not be expended by the Tribe until a final decree is entered by the Montana water court dismissing the Tribe's water rights claims. Upon entry of the final decree



and appropriation of the funds authorized by S. 1899, the Tribe's waiver and release of damages claims against the United States will become effective.

The history of the United States' breach of trust toward the Chippewa Cree Tribe - poor land choice decisions, poor land management, and failure to obtain sufficient water for, or to protect the little water available to, the Rocky Boys Reservation justifies a substantial federal contribution to the Chippewa-Cree water settlement in the form of authorization of federal projects and an economic development fund. By enacting S. 1899, the United States will at long last, set a firm foundation for providing sufficient water to support the Rocky Boy's Reservation as a viable, self-sustaining homeland for the Chippewa-Cree Tribe.

#### **IV. CONCLUSION**

The bill before these Committees today represents the culmination of many years of hard work on the part of many people. The bill has the support of the Tribe, the State of Montana, and the Administration. It ratifies a water settlement Compact that has the support of the State of Montana, the non-Indian neighbors of the Tribe, the Administration, and the Tribe. And it resolves the Tribe's water right related claims against the United States in a fair and reasonable manner. The Chippewa Cree Tribe urgently requests Congress to act expeditiously and to enact S. 1899 into law during this session of Congress.